

**SETH N. BRODER, ESQUIRE
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ATTORNEY FOR PLAINTIFF**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

U.S. MATERIAL SUPPLY, INC.,	:	CIVIL ACTION: 05-CV-2605 (JBS)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
KOREA EXCHANGE BANK, and KEB	:	
NY FINANCIAL CORP. as successor in	:	SECOND AMENDED COMPLAINT
interest to Korea Exchange Bank New York	:	
Branch	:	
Defendants	:	

Plaintiff, U.S. Material Supply, Inc., by way of Complaint against Defendants, Korea Exchange Bank and KEB NY Financial Corp., as successor in interest to Korea Exchange Bank New York Branch, says:

BACKGROUND

1. Plaintiff, U.S. Material Supply, Inc. (hereinafter "Plaintiff"), was, at all times relevant hereto, a corporation organized and existing under the laws of the State of New Jersey whose address is, 141 Shreve Avenue, Barrington, New Jersey 08007.
2. Defendant, Korea Exchange Bank was, upon information and belief, at all times relevant hereto, a bank doing business in the United States of America, with a principal place of business located at CPO Box 2924, Seoul, Korea.

3. Defendant, KEB NY Financial Corp. was, upon information and belief, at all times relevant hereto, successor in interest to Korea Exchange Bank New York Branch, and a wholly-owned affiliate of Korea Exchange Bank, organized and existing under the laws of the United States of America, with a principal place of business located at 460 Park Avenue, New York, New York, 10022.

FACTUAL BACKGROUND

4. Plaintiff hereby incorporates paragraphs one through three as if set forth at length herein.

5. Plaintiff contracted with Defendant Korea Exchange Bank by entering into a written Letter of Credit agreement whereby Defendant was to remit payment, through its agent, Korea Exchange Bank New York Branch, in the sum of \$338,162.40 upon Plaintiff's submission of certain documentation. A copy of said Letter of Credit is attached hereto as "Exhibit A".

6. Plaintiff submitted all requested documentation and a demand for payment to Defendant Korea Exchange Bank New York Branch by cover letter dated April 8, 2005. A copy of said letter is attached hereto as "Exhibit B".

7. Plaintiff's invoice as submitted to Defendant Korea Exchange Bank New York Branch requests payment in the amount of \$312,000.00. A copy of the invoice is attached hereto as "Exhibit C".

8. Defendant Korea Exchange Bank and Korea Exchange Bank New York Branch failed to make payment to Plaintiff as required under the Letter of Credit, despite repeated demand for payment.

9. Plaintiff again made demand for payment to Defendant Korea Exchange Bank New York Branch by letter dated April 27, 2005. A copy of said letter is attached hereto as "Exhibit D".

COUNT ONE
BREACH OF CONTRACT

10. Plaintiff incorporates paragraphs one through nine as if fully set forth at length herein.

11. Defendant Korea Exchange Bank is in breach of its contractual obligation it owes to Plaintiff as a result of its failure to make payment on the invoice submitted in the amount of \$312,000.00.

12. Despite repeated demand, Defendant Korea Exchange Bank has continued and refused to pay Plaintiff the outstanding balance for goods and services Plaintiff provided, in direct breach of Defendant Korea Exchange Bank's contractual obligation.

13. Plaintiff has performed all of its obligations under the Contract with Defendant Korea Exchange Bank.

14. As a result of the breach, Plaintiff has been damaged in the amount of \$312,000.00.

15. Pursuant to section 5-111 of the Uniform Commercial Code, Plaintiff is entitled to interest on the amount owed.

16. Pursuant to section 5-111 of the Uniform Commercial Code, Plaintiff is entitled to reasonable attorney's fees and other expenses of this litigation.

WHEREFORE, Plaintiff demands judgment against Defendant Korea Exchange Bank in the amount of \$312,000.00, plus accrued interest, cost of suit, and attorney's fees and any other remedy the Court may deem equitable and just.

COUNT TWO
LETTER OF CREDIT CLAIM

17. Plaintiff incorporates paragraphs one through sixteen as if fully set forth at length herein.
18. Defendant Korea Exchange Bank issued a Letter of Documentary Credit, Advice No. 5623ADV030911239 in the amount of \$338,162.40.
19. In executing the Letter of Credit, the Defendant Korea Exchange Bank bound itself to pay the amounts due to Plaintiff.
20. Plaintiff has not received payment for the unpaid invoice.
21. Plaintiff has fully and completely fulfilled its obligation pursuant to its Agreement with Defendant Korea Exchange Bank.
22. Under the Letter of Credit, Defendant Korea Exchange Bank is liable to Plaintiff in the amount of \$312,000.00.
23. Plaintiff has complied with all conditions precedent to payment under the Letter of Credit.
24. Plaintiff has demanded payment from Defendant Korea Exchange Bank, but Defendant Korea Exchange Bank has failed and refused to pay any portion of the Letter of Credit claim.
25. Pursuant to section 5-111 of the Uniform Commercial Code, Plaintiff is entitled to interest on the amount owed.
26. Pursuant to section 5-111 of the Uniform Commercial Code, Plaintiff is entitled to reasonable attorney's fees and other expenses of this litigation.

WHEREFORE, Plaintiff demands judgment against Defendant Korea Exchange Bank in the amount of \$312,000.00, plus interest, costs of suit, attorney's fees and any other remedy the Court deems equitable and just.

COUNT THREE
SUCCESSOR LIABILITY CLAIM

27. Plaintiff incorporates paragraphs one through twenty-six as if fully set forth at length herein.

28. Korea Exchange Bank New York Branch acted as the agent of Korea Exchange Bank. Payment on this Letter of Credit was to be made through the Korea Exchange Bank New York Branch.

29. Korea Exchange Bank New York Branch transferred all of its assets and liabilities to Defendant KEB NY Financial Corp. in 2004.

30. Upon the transfer of all assets and liabilities of Korea Exchange Bank New York Branch to Defendant KEB NY Financial Corp., Defendant KEB NY Financial Corp. became successor in liability for all claims against Korea Exchange Bank New York Branch.

31. As successor in liability, Defendant KEB NY Financial Corp. is obligated to make payment on the Letter of Credit issued by Defendant Korea Exchange Bank.

32. Pursuant to section 5-111 of the Uniform Commercial Code, Plaintiff is entitled to interest on the amount owed.

33. Pursuant to section 5-111 of the Uniform Commercial Code, Plaintiff is entitled to reasonable attorney's fees and other expenses of this litigation.

WHEREFORE, Plaintiff demands judgment against Defendant KEB NY Financial Corp. in the amount of \$312,000.00, plus interest, costs of suit, attorney's fees and any other remedy the Court deems equitable and just.

CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)

The undersigned counsel certifies that there are no other State Court actions or arbitrations pending involving the subject matter of this controversy at this time. There are no additional known parties who should be joined to the present action.

I certify the foregoing to be true, I am aware that if the above is willfully false, I am subject to penalties under the law.

MARCUS BRODER AHART
Attorney for Plaintiff

Date: 8/4/05

By: /s/Seth N. Broder
SETH N. BRODER, ESQUIRE